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Academic Freedom Under Pressure?

A Comparative Perspective

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Preface

The following essays spring from the research project “Academic Freedom Under Pressure? New State and Social Challenges in a German-Italian Comparison”, conducted in 2020 between the University of Milan *La Statale* and the German University of Administrative Sciences Speyer. They are an interdisciplinary contribution to comparative research in higher education.

The idea of publishing this book arose at two international meetings on academic freedom held on 6th and 7th February 2020 in Speyer and on 24th and 25th September 2020 (online) in Milan, where the many key points of academic freedom were highlighted and analysed.

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Abbreviations

| | |
|------------|---|
| AAUP | American Association of University Professors |
| ABH | Decision of the Hungarian Constitutional Court (Alkotmánybírósági Hatarozatai) |
| AG | Advocate General |
| AGCOM | Authority for Communications Guarantees (Autorità per le garanzie nelle comunicazioni) |
| AIFA | Italian Pharmaceutical Agency (Agenzia Italiana del Farmaco) |
| ANVUR | Italian National Agency for the Evaluation of Universities and Research Institutes (Agenzia Nazionale di Valutazione del Sistema Universitario e della Ricerca) |
| AQ Austria | Austrian Accreditation Authority (Agentur für Qualitätssicherung und Akkreditierung Austria) |
| ARWU | Academic Ranking of World Universities |
| ASN | National Scientific Habilitation (Abilitazione Scientifica Nazionale) |
| ASt | Autonomy Statute |
| BGBI | Federal Official Journal (Bundesgesetzblatt) |
| BVerfG | Federal Constitutional Court (Bundesverfassungsgericht) |
| BVerfGE | Judgments of the Federal Constitutional Court (Entscheidungen des Bundesverfassungsgerichts) |
| BvR | File number of a violation of fundamental rights complaint to the Federal Constitutional Court (Aktenzeichen beim Bundesverfassungsgericht) |
| CEU | Central European University |
| CFR | European Charter of Fundamental Rights |
| CiD | Considering in Law (Considerato in Diritto) |
| CNR | National Research Council (Consiglio Nazionale delle Ricerche) |
| CoR | Committee of the Regions |
| CRUI | Conference of Italian University Rectors (Conferenza dei Rettori delle Università Italiane) |
| D.M. | Ministerial Decree (Decreto ministeriale) |

| | |
|---------|--|
| D.R. | Rectoral Decree (Decreto Rettorale) |
| DPCM | Decree of the President of the Council of Ministers (Decreto del Presidente del Consiglio dei Ministri) |
| ECJ | European Court of Justice |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| EEA | European Economic Area |
| EGTC | European Grouping for Territorial Cooperation |
| ELKH | Eötvös Loránd Research Network (Eötvös Loránd Kutatási Hálózat) |
| EMEP A | Executive Master Euregio in European Public Administration |
| ENQA | European Network for Quality Assurance in Higher Education |
| ERA | European Research Area |
| EUREGIO | European Region |
| FFO | Ordinary Financing Fund (Fondo di Finanziamento Ordinario) |
| FIRE | Foundation for Individual Rights in Education |
| GATS | General Agreement on Trade in Services |
| GDP | Gross domestic product |
| GEV | Groups of evaluating experts (Gruppi di Esperti della Valutazione) |
| GG | Basic Law, German Constitution (Grundgesetz) |
| G.U. | Official Journal (Gazzetta Ufficiale) |
| HEIs | Higher education institutions |
| HRG | University Framework Act (Hochschulrahmengesetz) |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICT | Information and communication technologies |
| IFRC | International Federation of Red Cross and Red Crescent Societies |
| ISTAT | Italian National Institute of Statistics (Istituto Nazionale di Statistica) |
| ITU | International Telecommunication Union |
| LERU | League of European Research Universities |
| MCU | Magna Charta Universitatum |
| MID | Ministry for Technological Innovation and Digitization (Ministero per l'innovazione tecnologica e la transizione digitale) |
| MTA | Hungarian Academy of Sciences (Magyar Tudományos Akadémia) |
| MUR | Ministry of Universities and Research (Ministero dell'Università e della Ricerca) |
| NGO | Non-governmental organizations |
| NSM | New Steering Model (Neues Steuerungsmodell) |
| NUV | Internal evaluation body (Nucleo di Valutazione) |
| OA | Open access |
| OECD | Organisation for Economic Co-operation and Development |
| OJ | Official Journal |
| OJS | Open Journal System |
| OPALE | Open Process Automation Library |
| PatG | Patent Act (Patentgesetz) |

| | |
|--------|---|
| PhD | Doctor of philosophy |
| R&D | Research and development |
| R&I | Research and innovation |
| S. | Senate (Senato) |
| SMEs | Small and medium enterprises |
| SSH | Social sciences and humanities |
| STM | Scientific, technical and medical |
| TAR | Regional Administrative Court (Tribunale Amministrativo Regionale) |
| TEC | Treaty establishing the European Community |
| TEU | Treaty on European Union |
| TFEU | Treaty on the Functioning of the European Union |
| UN | United Nations |
| UNAIDS | Joint United Nations Programme on HIV/AIDS |
| UNDP | United Nations Development Programme |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNICEF | United Nations International Children's Emergency Fund |
| UNIMI | University of Milan (Università degli Studi di Milano) |
| UrhG | Copyright Act (Urheberrechtsgesetz) |
| VQR | Research Quality Evaluation Procedure (Valutazione della Qualità della Ricerca) |
| WHO | World Health Organization |
| WTO | World Trade Organization |

Introduction: The Multiple Expressions of Academic Freedom



Lorenza Violini, Cristina Fraenkel-Haeberle, Giada Ragone, and Margrit Seckelmann

1 Premise

Academic freedom is currently under pressure. The most obvious cases in Europe are those of Hungary and Poland, where the state interferes directly in core academic issues by changing the laws.¹ More generally, research and teaching are at risk in European democracies. Except in Hungary and Poland, this is not only due to political constraints: society itself seems to have lost its trust in science. Scientific results are declared “fake news” and students and lecturers are not allowed to discuss social, gender or integration issues (keyword: “trigger warning”).² Such threats to research and teaching curb scientific autonomy directly and indirectly.

Attacks on academic freedom come from different quarters. Academia, in particular, is fighting on several fronts. To spark socio-political exchange between the German University of Administrative Sciences Speyer and the University of Milan *La Statale*, two “symmetrical” two-day events were organized in Speyer and Milan, respectively. The aim was to compare and discuss threats to academic freedom caused by institutional and social constraints in Germany and Italy.

The ensuing scientific results are published in this volume, under four main headings. The first section concerns the European dimension of freedom of the arts and sciences. The second includes comparative studies of some new challenges

¹See the contributions of Stephanie Schiedermaier and Petra Láncoš in this volume.

²See the contributions of Francesco Magni and Giada Ragone in this volume.

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to academic freedom. The third deals with current developments in higher education and new forms of university governance, as well as the light and dark sides of some future scenarios. The fourth section is devoted to the new role of universities and freedom of research and teaching, exploring *inter alia* current developments, such as the significance of private higher education and the evolution of open access publication. The implications of externally imposed evaluation procedures, ethics commissions and new academic duties like the “third mission” of universities are also discussed.

2 Academic Freedom in Europe

Since the Maastricht Treaty (1992), new provisions have established the legal basis for an EU right of action in the area of academic freedom. The contribution by *Gianmario Demuro* explores the complexity of freedom of artistic and scientific expression, focusing on different “bills of rights” (The European Convention of Human Rights ECHR, the Charter of Fundamental Rights CFR of the EU, and national Constitutions) and on their interaction. He highlights the fact that freedom of art and freedom of scientific research, though not expressly protected by national Constitutions, are deemed to exist as universal freedoms in the European legal system and appear to be founded on the value of the human person and on a common core of fundamental rights.³ This gives the commitment to respect academic freedom and the rule of law a supranational and constitutional dimension. It is part of the constitutional identity of EU member states and is based on their common constitutional traditions.

In higher education, according to Article 6 Treaty on the Functioning of the European Union (TFEU), the EU only has competence to support, coordinate or supplement the actions of the member states. Higher education is therefore traditionally a domestic issue.⁴ However, the Europeanization of higher education relies on several pillars, which are highlighted in the present volume by *Sabrina Tranquilli*. With the Lisbon Strategy, the choice of the open method of coordination left the states free to align national policies on the basis of indicators and benchmarks, without limiting their autonomy. This method aims to “Europeanize” areas within the competence of the member states (mainly by soft law instruments): it affects national policy processes “bottom-up” and stems from the member states themselves, not from the EU. *Tranquilli* examines the European Research Area (ERA) from two perspectives: as a space where EU researchers can move freely

³The connection to the ECHR is also given by Art. 52(3) CFR, which establishes a link to the meaning and scope of the rights enshrined in European Convention on Human Rights.

⁴According to Art. 165 TFEU, the European Union contributes “to the development of quality education by encouraging cooperation between Member States [...] fully respecting the responsibility of the Member States for the content of teaching and the organization of education systems [...]”.

and as a tool to promote research.⁵ The main goal of ERA is to make the EU more competitive and attractive as a research and innovation centre. The author highlights the pros and cons of this strategy, including making EU policies functional for economic development without parallel implementation of national systems or attention to the social aspects of research. The ERA is designed to promote a new method of “knowledge production” through transnational collaboration in disciplines with a stronger national character and inclusion of a “European dimension” in scientific reflection. EU programmes have fostered a “project-shaped” research model, which ensures the “portability” of funding, while also giving priority to research with concrete objectives and a short-term dimension.

Another crucial aspect of academic freedom in Europe concerns the rule-of-law crisis and the massive threat to academic freedom in EU member states such as Poland and Hungary. *Stephanie Schiedermaier* scrutinizes the mechanisms available at European level to protect freedom of research and teaching in the hotspots of the democratic crisis. In Hungary, for example, the new attitude towards the famous University for Theatre and Film Arts in Budapest, increasing pressure on the Hungarian Academy of Sciences and expulsion of the Central European University (CEU), which was ranked the best university in Hungary, are instances of major erosion of academic freedom.

A key issue discussed in the paper is how Article 13 CFR can be enforced effectively, given the weak competence of the EU in this field. In the very recent decision of the ECJ (6th October 2020, Case C-66/18 *Commission v. Hungary*) also the institutional and organizational dimension of academic freedom has to be interpreted broadly, and connected to the autonomy of academic institutions (in this case the CEU). This leading case in the supranational jurisprudence on academic freedom, highlighted by *Gianmario Demuro* and *Stephanie Schiedermaier*, underlines the constitutional dimension of this right, including the meaning of freedom to establish higher education institutions and to conduct business.

The cross-border cooperation dimension of academic freedom is explored by *Elisabeth Alber* who shows that cross-border cooperation can transform a national boundary from a barrier to a space of bilateral and multilateral cooperation, also in the field of higher education. It can also help to effectively implement specific borderland policies and to achieve a critical mass for scientific activity in regions characterized by small academic institutions. The starting point is the idea that European integration has fostered a new perception of borderlands and has focused attention on how areas under the authority of different states can deploy concrete cross-border activities. The contribution examines the nexus between the autonomy of the constituent units and the institutional autonomy of higher education institutions. It investigates the trigger question of the capacity of institutional autonomy, an essential dimension of academic freedom, to promote cross-border cooperation and the ways in which such cooperation takes place.

⁵See the contribution of Sabrina Tranquilli in this volume.

Under the technical and financial support of the EU, the number of *Euregios*, conceived as laboratories of subnational integration and a platform to overcome administrative obstacles, has increased sharply in the last 30 years. The political autonomy of the participating political entities and the concept of borderlands as “soft spaces”, interfaces that attenuate state borders, are at the core of the paper. Borderlands allow regional, national, supranational and international integration.

3 New Challenges

This section focuses on some very recent cases that concerned freedom of teaching and research in universities. The cases illustrate the variety of threats to academic freedom today. The challenges include an institutional crisis (the Hungarian degeneration into an illiberal democracy), a pandemic (COVID-19) and a cultural phenomenon (increasing “anglophone monolingualism”⁶ among academics).

The first contribution by *Petra Lea Lánco*s provides a broad and detailed analysis of the state of academic freedom in a country, Hungary, currently facing a rule-of-law crisis. The Hungarian Academy of Sciences case and the CEU saga, already discussed in essays of the previous section, are contextualized in the broader framework of authoritarian rule. After outlining the constitutional, international and European sources of law relevant to the Hungarian academic landscape, the author describes the laws passed by the ruling party in the last few years (e.g. those restructuring many state funded research institutions), and the restriction of liberties in the Hungarian academic arena. Some possible developments of the cases considered are outlined, and interesting reflections on the meaning of academic autonomy are expressed.

The second essay by *Flaminia Aperio Bella* shows that academic freedom is one of the liberties and rights threatened by the current SARS-CoV-2 pandemic. The global health crisis is highlighting the crucial role played by experts in evidence-based policymaking, with profound consequences for society, which will hopefully rouse new awareness of the importance of research (and investment in research) in our societies. On the other hand, the pandemic is also having negative effects on academic freedom. *Aperio Bella* focuses on two specific risks: monopolization of scientific debate, and the obstacles to achieving research objectives posed by lockdown. In the first case, it stands to reason that COVID-19 is monopolizing scientific debate, not only in the field of medicine, and it is therefore predictable that most forthcoming research products will be devoted to this subject, marginalizing other topics and curiosity-driven research (so-called “pure research”). Moreover, the importance and high media exposure of academics could lead to the politicization of scientific and technical information. With reference to lockdown measures, there is no doubt that “social distancing” and limited access to universities, labs and

⁶See the contribution of Diana-Urania Galetta in this volume.

libraries is limiting freedom of research. Striking a balance between this liberty and the right to public and individual health does not seem easy to achieve.

The paper by *Diana-Urania Galetta* discusses the widespread use of English in universities and its implications for freedom of teaching. The chapter starts with the case of the Milan *Politecnico*, where in 2012, the Academic Senate decided that master's degree and PhD programmes would be taught exclusively in English. The ensuing judicial *saga* exposed the clash between individual academic freedom (freedom of teaching) and its institutional dimension (university autonomy): to what extent is it legitimate to impose the use of a foreign language on lecturers (and students)? Is a university's ambition to become more international reason enough to justify such restriction of *Lehrfreiheit*? According to the author, the balance between the rights and interests at stake needs to undergo a strict *ex ante* proportionality test.

4 Threats to Freedom of Teaching and Research in Light of “Governance by Numbers”

Since the basic question of the two seminars and the project at the origin of this volume was to identify threats to academic freedom, this section of the book focuses on the difficulties inherent to the process of modernization of higher education systems in Europe. The Italian case, explored in the three chapters by *Lorenza Violini*, *Alfredo Marra* and *Elena Buoso*, can be considered seminal in highlighting these threats. The discussions held during the seminars in Speyer and Milan, as well as the contribution by *Margrit Seckelmann*, confirm that the same threats afflict the German university environment (albeit to varying degrees).

A preliminary research question was to define the meaning of academic freedom by interpreting the provisions of the Italian and the German Constitution. To do so, the Charters and the legislative implementation in the two legal systems were compared, as was the definition of competences, in Italy mainly enacted by the national government, whereas in Germany, the federate states (*Länder*) each have their own legislative framework for higher education.

The chapter by *Margrit Seckelmann* opens with an analysis of the German understanding of academic freedom, which is as broad and multi-dimensional as the one designated by the Italian constitutional framework and outlined in the essays of the Italian authors. There are minor differences, the German rules being more closely related to freedom of speech (Article 5, German Constitution, GG), whereas the Italian rules (Article 33, which protects the freedom of science, freedom of teaching and the principle of university autonomy) are drawn from the fundamental principle of Article 9, which defines the duty of the Republic to promote culture, as well as scientific and technical research. There are also some differences in the case law of the two constitutional courts, as highlighted by *Seckelmann*. In Germany, the court clarified that the state has the duty to predispose adequate organization

(constitutional judges therefore have the power to check the corresponding legislation), which is not the case in Italy, where the discretionary power of the government in defining a general framework for the implementation of university autonomy is almost unrestricted.

Regarding the “subjective” impact of constitutional guarantees for academic freedom, the *Bundesverfassungsgericht* first upheld the rights of individuals (chairholders) against the institution. In the period 2004 to 2010, it was more concerned with organizational autonomy, and finally it shifted back to the personal side of constitutional guarantees.

Seckelmann’s paper then focuses on the organizational autonomy of German universities, the design of which was strongly influenced by the New Steering Model (NSM), the German version of New Public Management, which was also followed in Italy. Central to the model was the strengthening of university autonomy, cutting links between university and government, and creating more transparency and accountability through quality assurance. Unfortunately, the result has been an increase in university bureaucracy under the slogan “government by numbers”. The papers of *Alfredo Marra* and *Elena Buoso* indicate that the same is happening in Italy.

Moving from the same starting point, namely the constitutional provisions regarding academic freedom, the chapter by *Lorenza Violini* traces the history of several attempts by the Italian government to modernize the Italian higher education system, up to Law no. 240/2010. The aim was to implement the concept of university designated by the Constitution, but unfortunately it has not always been successful. In Italy, academic freedom is in theory guaranteed by granting universities autonomous status, independent of state and market, putting academics and scientists in a “safe” environment, where in theory they can decide how they are governed, their budget, procedures and products. Freedom of the arts and sciences and freedom of research and teaching come under this umbrella.

It emerges from the three “Italian” contributions that the implementation of university autonomy has been a long process, which they trace through developments in Italian laws relating to universities. In contrast with the German legal system, where competences for universities belong to the *Länder*, in Italy this competence belongs to the central state. Only minor issues (such as financial support for students from low income families, the so-called *diritto allo studio universitario*) are left to regional legislation in the framework of national laws.

Seckelmann’s essay illustrates the far-reaching consequences of the different constitutional division of competences in Italy and Germany: “the German way seems to be softer than the Italian model: more a form of indirect governance than direct steering”, and has for instance prevented establishment of a national evaluation agency, as happened in Italy. Moreover, excellence initiatives (the Italian *Dipartimenti di Eccellenza* and the German *Exzellenzinitiative*), fully designed and decided at central level in Italy, in Germany are based on an intra-federal arrangement between the *Bund* and the *Länder*, thus avoiding violation of the Constitution. Last but not least, funding for universities is negotiated in Germany between the *Land* government and the universities, whereas in Italy it is decided entirely by state

law and the state annual budget. Coordination and pluralism therefore seem to be much better protected in a federal state, where division of competences between different levels of government favours decentralization of decisions, autonomy and academic freedom. In support of this conclusion, *Seckelmann* remarks in closing that the threat posed by “government by numbers” (i.e. “projectification” of university activities and its side-effects) has not yet eventuated. The regulator is warned to be aware and vigilant so as to avoid consequences that could seriously impair academic freedom.

The Italian situation seems to be more problematic. The threat created by centralization of decisions by the national Parliament and the National Agency for the Evaluation of Universities (ANVUR) becomes evident when one considers developments in Italian laws touching the question. Not by chance the laws are named after the different Ministers for Education, whose ministry was split in 2010 to create two ministries, one competent for schools and the other for universities. In fact, the major pieces of legislation on university organization and governance, enacted in 1989 (granting Italian universities some autonomy, such as the power to draft their own statutes and regulations), 1999 (introducing an Ordinary Finance Fund), 2006 (creating the evaluation agency, ANVUR) and 2010 (the current law), were drafted by the central government and approved by the national Parliament. Though purportedly aimed at creating academic autonomy, as required by the Constitution, the disappointing effect of these laws was to centralize control over Italian higher education (*Marra*). Moreover, for a long time these laws were unable to break academic self-referentiality, which harks back to before the student revolution of 1968 (*Violini, Marra*).

The laws regulating the legal status of universities are described in the three “Italian” contributions. Each offers a specific point of view for evaluating the process. The authors have different purposes and describe different aspects of the Italian legislation. After some introductory remarks on the changing legislative landscape of higher education and the increasing role of the state—a phenomenon known in all European countries—*Alfredo Marra* focuses on the organizational aspects of evaluation and accreditation according to the standards enacted by ANVUR. The Agency was created in 2006 and only became fully effective in 2011, thus making Italy a latecomer in the field of academic evaluation (*Buoso*). *Marra*’s accurate description of the structure and procedures of ANVUR underlines a lack of independence of the agency from the Ministry for Universities and its pervasiveness in all aspects of academic activities, from research, teaching and accreditation of courses to procedures for National Scientific Qualification and distribution of funding.

These conclusions are shared by *Elena Buoso* in her contribution on the standards enacted by ANVUR for evaluation and accreditation. The activity of ANVUR is thoroughly explored in all its functions, from research quality assessment exercises, which take place every 5 years, to *national scientific habilitation* and the salary increment procedure for academics, based on quantitative-qualitative evaluation. These procedures are criticized on the basis of the international literature and their downsides are highlighted, for example pressure to turn research into “research

products” and curbs on new research topics. The criteria on which these procedures are based presage threats for academic freedom.

Returning to the essay by *Lorenza Violini*, the author takes a close look at the efforts of the Italian legislator to strike a balance between academic freedom, autonomy and accountability. The essay centres on the attempt to dismantle the traditional understanding of “academic freedom” and “academic autonomy” as academic self-referentiality and to shift the balance towards accountability. In describing the process, *Violini* and *Buoso* agree that implementation of the *constitutional value* of autonomy has sometimes led to unacceptable privileges and misconduct among academics. Regarding the latest reform (law no. 240/2010), which drew heavily on ideas from New Public Management, over-regulation and over-bureaucratization of universities have become a major threat to academic freedom in Italy and Germany alike, though in different measures. One may therefore ask if the attempt to modernize the university system according to these principles is a reasonable approach to the new challenges and threats in the sphere of European higher education.

5 The New Role of Universities and Freedom of Science and Teaching

The landscape of European higher education is also moulded by new tasks (or “missions”) facing universities. For instance, universities have to provide transparency (by open access and clear and rapid communication of new insights), accountability (by ethics commissions), participation (by including citizens in their research) and “safe spaces” (signalled by “trigger warnings”).

Diana zu Hohenlohe analyses how academic freedom can be ensured under the special conditions of private universities (with special reference to Austria and Germany). Firstly, she states that private institutions of higher education are not exempt from the duty to ensure academic freedom. Although the state cannot interfere in private institutions, it can protect academic freedom by regulating its context. At least four pillars are required: (1) institutional academic freedom of the university itself; (2) individual academic freedom of the teaching staff; (3) collective academic freedom of the teaching staff; (4) corporate academic freedom of faculties and university departments. This institutional arrangement is not fundamentally different from the indirect context-steering by which public universities are regulated in Germany, as also in that case, the state cannot interfere directly in core academic affairs. *Zu Hohenlohe* then investigates the differences between public and private universities and analyses typical constellations in which the rights of the owners of private universities can conflict with the academic freedom of the university members. Finally, she proposes specific instruments to solve such conflicts and safeguard academic freedom in private universities.

Irene Pellizzone's contribution evaluates whether (and how far) mandatory “online first” and “open access” publication of public-funded research affects academic freedom, taking the situation in Italy as an example. She points out that at least in the Humanities, this rule is a mixed blessing. While the author benefits from immediate circulation of his or her idea, the publication practices and strategies change fundamentally, so that researchers can no longer choose “autonomously” where to publish.

Cristina Fraenkel-Haeberle outlines the transfer of research (i.e. clear and rapid communication of new insights) as a new mission for universities. Research (first mission) and teaching (second mission) are now flanked by a third mission: technology transfer. This new requirement, imposed in Italy and Germany alike, is in many ways critical for academic freedom. But a crisis can always be a chance: a much broader understanding of the third mission, not aimed solely at the economic dimension of university engagement, has been gaining ground. If not only economic outcomes but also the “social contribution” of universities is included in the third mission, innovation can be the result.

Michael Fehling analyses whether ethics commissions foster or endanger academic freedom. *Fehling* answers this question in a nuanced way. He observes that, generally speaking, the involvement of ethics commissions threatens academic freedom, since these bodies are tasked with making more or less binding decisions on issues that touch the core of academic freedom, namely balancing the risks and benefits of proposed clinical trials. But then he hints at possible positive aspects of ethics commissions, which to a certain degree may even work to promote academic freedom, as for example when approval by such a commission helps to create a degree of legal certainty and protects legitimate expectations of the researchers involved. These commissions can uphold the rule that scientific projects can only be assessed on a legal basis. Their margin of appreciation must be defined narrowly, but when combined with the margin of appreciation enjoyed by researchers, it may promote, rather than constrain, academic freedom.

The next two articles in this section, written by *Giada Ragone* and *Francesco Magni*, analyse current threats to academic freedom from universities themselves: speech restrictions and trigger warnings. *Ragone* looks at the phenomenon of “trigger warnings” used on many US and Canadian campuses to signal speech considered politically controversial that could be a source of harassment or “micro-aggression”. This elicits a system of self-censorship with students demanding formal investigations when faculty members publish papers whose contents are considered offensive.

In Italy and Germany, the (sometimes understandable) sensitivity to “micro-aggression” still plays a rather marginal role but is gaining followers. What are the implications for academic freedom? For example, does the fact that members of state administrations (including universities) are required to use gender-fair language limit freedom of expression (as stated by Article 21 of the Italian Constitution)? And are such regulations in line with the freedom of teaching under Article 33? *Ragone* proposes a culture-sensitive, pluralist approach to these questions that also emphasises freedom of expression and teaching.

Francesco Magni takes an educationalist's approach. He looks at the boon and bane of the *Free Speech Movement* founded at the University of California, Berkeley, in 1964. Paradoxically, student rights to freedom of expression, demanded in the 1960s, were successful, only to be disregarded today as students fight for respect of their vulnerability. Finally, *Magni* asks how universities as institutions can balance demands for freedom of expression and for limits on speech.

The last contribution deals with the interaction of experts and laypeople in the field of "citizen science" as a kind of "magic formula" to heal estrangement of the general public. *Cristina Besio* and *Marco Jöstingmeier* introduce the concept of "citizen science", which has raised expectations. Deans encourage university teachers to engage laypeople in their research. As *Besio* and *Jöstingmeier* explain, experts and laypeople play different roles in the production of knowledge. Although criticized, science remains a specific logic, which cannot be replaced by lay knowledge. *Besio* and *Jöstingmeier* plead for a combination (not a mixture) of both approaches: experts bring theories, tested methods and results controlled by peer-review systems to the forum; laypeople bring live experience, everyday evidence and practical views.

Finally, the papers of the young panellists at the international conference in Milan, regarding threats to academic freedom mainly related to COVID-19 and to scientific evaluation, have already been published online.⁷

6 Conclusions

In a pioneering study of 1966 (*Autonomy and academic freedom in Britain and in English-speaking countries of tropical Africa*), Sir Eric Ashley identified academic freedom as an "internationally recognized and unambiguous privilege of university teachers" that must be protected "whenever and however challenged". Inspired by this statement, the present book tackles the task of identifying the challenges some university systems face in our time.

Where do the major challenges for academic freedom lie today? The results we draw from our research show several aspects under pressure. The most important and far-reaching ones are witnessed by the essays dealing with the Hungarian and Polish systems. Here, threats to academic freedom recall ghosts of the European past, when the dictatorships that ruled certain countries in the 1930s hegemonized education and attempted to eliminate any possible cultural alternative to the one promoted by the government.

⁷The contributions by Lavinia del Corona, Nannarel Fiano, Emanuela Furiosi, Murtaza Mohiqi, Mahammad Mustafa Mohiqi, Beatrice Rabai and Elias Wirth can be found in issues 1 and 2 (2021) of the online scientific journal of the Università degli Studi di Milano (CERIDAP), <https://ceridap.eu/en/issues/>.

Beyond these extreme cases, the volume deals, in the different sections, with other real or potential threats, most derived from recent attempts made by governments to modernise higher education, while others come directly from societal trends and developments.

All these challenges must be part of our scholarly reflections to warn the legislators, governments and independent agencies involved in university governance, as well as university governance itself. Such reflections are crucial for stimulating discussion and avoiding taking the threats for granted. As scholars and responsible members of the university community, we should not overlook our fortune to live in countries, such as Germany and Italy, where academic freedom and academic autonomy are deeply rooted in our Constitutions and in our legal tradition: we have a fundamental responsibility towards present and the future generations to protect them “whenever and however challenged”. Although these challenges are difficult to erase, it is important that they do not erode the basic values and meaning of our academic communities.

Part I
Academic Freedom in Europe

Science and the European Dimension of Freedom of the Arts and Science



Gianmario Demuro

Abstract Freedom of scientific research and the closely related academic freedom exist in European legal systems as universal freedoms. Such freedoms appear to be founded directly on the value of the human person, irrespective of EU citizenship, and on the *common law* tradition of freedoms and fundamental rights in Europe. The European dimension of academic freedom is a clear hermeneutical parameter of constitutional identity. A shared European constitutional identity can only be built by political choice.

Keywords Freedom of scientific research · Academic freedom · European Charter of Human Rights · Constitutional identity · Political constitutionalism

1 Freedom

The European dimension of freedom of the arts and science is written in Article 13 of the European Charter of Human Rights: “The arts and scientific research shall be free of constraint. Academic freedom shall be respected.”

The historical origin of the freedoms guaranteed by Article 13 of the Nice Charter are not immediately recognizable, because such freedoms are not regulated in the European Convention of Human Rights. Nevertheless, we can generally refer to Articles 9 and 10 of the European Convention of Human Rights that regulate freedom of thought, conscience and religion, and freedom of expression.¹ Regarding freedom of expression, the European Court of Human Rights has in fact included freedom of artistic expression as one aspect of the freedom to receive and

¹ECHR Judgement (23.6.2006) *Sorguç v. Turkey* is the first inclusion of academic freedom under the protection of Article 10 of the Convention, as observed by Bieter et al. (2016), p. 606.

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